

Mr. Chairman and members of the Committee, my name is Robert Van Deren, V A N space D E R E N. I am here today asking you to vote "no" on Senate Bill 407, a bill revising district court confirmation of federal water contracts. I believe the existing law is reasonable and necessary in authorizing local courts to review the Bureau of Reclamation water contracts to determine if they are legal contracts under State law and consistent with Montana water law.

I was born in Dillon and raised on the family ranch north of Dillon on the Beaverhead. Our family, my parents, my wife and our son, produce winter pasture for about 2000 head of mother cows on the ranch. Theodore, my 5-year-old son will be the 4<sup>th</sup> generation of Van Deren to have lived and worked on the ranch.

One of the reasons my Father and Grandparents bought the ranch was because of its excellent water rights. The ranch has decreed and appropriated rights from the Beaverhead River, Albers Slough and various tributaries. We did not become part of the Bureau of Reclamation's Dillon area project because our water rights were good enough that we did not need to sign up for the Bureau of Reclamation's Dillon reservoir storage water. We were offered 1000 Class A shares by the Clark Canyon Water Supply Company. Class A shares were for specific acres of land that the Bureau of Reclamation determined had an adequate existing water supply and did not need supplemental water. The Bureau of Reclamation and our neighbors in the project refer to us as "non-signers". We are about the only remaining commercial size operation that is a "non-signer".

Over the years, the acres irrigated by the Project expanded to include lands above the canals, on hillsides, areas with poorer soils and outside district boundaries.

The Congressional authorization for East Bench Irrigation District was 21,800 irrigated acres and the Bureau of Reclamation approved a new contract for 28,055 acres.

Congress authorized Clark Canyon Water Supply Company to irrigate a maximum of 28,000 acres for Clark Canyon Water Supply Company and that has grown to 33,706 in the new contract. This is a Dillon area project wide increase of over 12,000 acres over the Congressional authorizations or over  $\frac{3}{4}$  of an acre per day for the past 40 years.

It takes more water to irrigate more acres. Based on the Montana State Engineer's figures from the 1958 confirmation, the 12,000 additional acres would require diversion of over 36,000 acre feet a year of additional water. The Bureau of Reclamation determined in the original planning document that the 21,800 full service acres and the 28,000 supplemental acres were the maximum acres that could be viably served by the project authorized by Congress. The original plan was for a flood irrigation system where the return flows were reused multiple times in the basin.

As the Dillon area project acres expanded and consumed more water, we began noticing less water available for our irrigation in the springs, sloughs and the river. Some of the springs have dried up and the Albers Slough is running about  $\frac{1}{3}$  of its historical flow.

The Dillon irrigation districts also noticed this shortage and attempted, unsuccessfully, to get our water shut off at various times, starting in the summer of 2001.

Contract renewal and judicial confirmation of the contract under MCA 85-7-1957 were possible remedies to the expanded acres. We participated early and often in the contract renewal process attending many of the various environmental assessment and water contract renegotiation meetings and various meetings of the District and Company. We also provided extensive comments on the various documents produced by these many meetings.

In the new contract, the Bureau of Reclamation included all of the 12,000 additional expanded acres, both in district and out of district in the new contract. The Bureau of Reclamation's new Dillon water contracts do not include any maps identifying the specific acres to be irrigated under the contract. The new Dillon contracts only require that the maps be completed by December 31, 2009.

Back in December 2006, the local court in Dillon was asked to confirm the Bureau of Reclamation contracts with maps to be supplied no later than three (3) years later, December 31, 2009. As of today, we have still have not received the maps specifying the contract acres to be irrigated under the new contract.

Under MCA 85-7-1957, we appeared and asked the local court to review the water contracts to determine if they were legal contracts and consistent with Montana water law.

There is ongoing litigation involving these code sections. We have alleged in the Dillon Court that the contract is illegal because it adds 12,000 acres more than the Congressional authorization. It is also part of an appeal to the Montana Supreme Court regarding a motion to combine the Dillon contract confirmation case and the Virginia City case to expanding the district boundary to include out of district acres.

We are opposed to the local courts losing oversight of the Bureau of Reclamation water contracts. It takes away our remedy as an irrigator and neighbor to oppose growing acres in the contract and the project. It erodes Montana's control and oversight of State waters and the Bureau of Reclamation projects using State waters.

I appreciate your consideration of my comments on Senate Bill 407 and urge a "do not pass" vote.

Sincerely,



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